



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/ES

MAR 4 2014

Ms. Lynn J. Good
President and Chief Executive Officer
Duke Energy
550 South Tryon Street
Charlotte, North Carolina 28202

Dear Ms. Good:

This letter is sent on behalf of the Natural Resource Trustees identified below to notify Duke Energy of, and invite its participation in, the assessment of potential injuries to natural resources resulting from the release of 39,000 tons of coal ash and 27 million gallons of ash pond water¹ to the Dan River from Duke Energy's Dan River Steam Station coal ash pond in Rockingham County, North Carolina (Site), on or about February 2, 2014. Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. §§ 9601 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); and the CERCLA Damage Assessment Regulations (43 C.F.R. Part 11); as well as Subpart G of the National Contingency Plan (40 C.F.R. §§ 300.00 et seq.); and Executive Order 12580 (52 Fed. Reg. 2923 (Jan. 23, 1987)); as amended by Executive Order 12777 (56 Fed. Reg. 54757 (Oct. 19, 1991)), the Trustees are authorized to recover natural resource damages, plus the reasonable costs of assessing those damages. Such damages may include the cost of restoration of natural resources, the cost of replacement or acquisition of the equivalent resources, and the value of any loss of use of the resources.

Natural resources injured or potentially injured as a result of the release from the site include, but are not necessarily limited to: (1) freshwater fish, including the federally endangered Roanoke logperch (*Percina rex*); (2) migratory birds, including songbirds, waterfowl, raptors, and others; (3) lands, including wetlands, flood plain, and instream; (4) aquatic and terrestrial plants, invertebrates, including the federally endangered James spinymussel, and microorganisms, and; (5) surface waters and sediments. Services provided by these natural resources include, but are not limited to, the following: (1) habitat for trustee species, including food, shelter, breeding areas, and other factors essential to survival, and; (2) recreational uses such as sport fishing, water-contact recreation, boating, canoeing, hiking, nature observation, hunting, and other activities.

The Trustees for these natural resources include the U.S. Department of the Interior (DOI), acting through its U.S. Fish and Wildlife Service (Service), the State of North Carolina, acting

¹ USEPA OSC Kevin Eichinger (2/20/2014 email to T. Augspurger, USFWS)

through its Department of Environment and Natural Resources (NCDENR), and the Commonwealth of Virginia, acting through its Department of Environmental Quality (VADEQ). The Service is a Trustee for natural resources, and their supporting ecosystems, managed or controlled by DOI, such as migratory birds, threatened and endangered species and their habitats. The NCDENR and VADEQ maintain trusteeship over natural resources, including their supporting ecosystems, within the boundary of their respective State, or managed by, controlled by, or appertaining to their respective State.

The Trustees have made a preliminary determination that all of the following criteria specified in section 11.23(e) of the Natural Resources Damage Assessment and Restoration (NRDAR) Regulations have been met:

1. A discharge of oil or a release of a hazardous substance has occurred.
2. Natural resources for which the Federal or State agency may assert trusteeship under CERCLA have been or are likely to have been adversely affected by the discharge or release.
3. The quantity and concentration of the discharged oil or released hazardous substance is sufficient to potentially cause injury, as that term is used in this part, to those natural resources.
4. Data sufficient to pursue an assessment are readily available or likely to be obtained at a reasonable cost.
5. Response actions, if any, carried out or planned do not or will not sufficiently remedy the injury to natural resources without further action.

Accordingly, the Trustees have determined that initiation of the assessment phase of the NRDAR process is warranted and hereby invite Duke Energy, as the party responsible for the release, to participate in development and implementation of assessment and restoration activities. We appreciate the ongoing coordination between our agencies and Duke Energy on response activities and welcome continued cooperative effort in assessing potential natural resource injuries related to the ash release. The Trustees are available to meet with members of your staff regarding your participation in the natural resource damage assessment process on Thursday, March 13, 2014, at 2:30 PM. If you or members of your staff are not available at this time we can further discuss this matter at your earliest convenience within 30 calendar days of your receipt of this invitation.

To schedule a meeting or to answer any questions, please contact Sara Ward, Raleigh Ecological Services Field Office, at (919) 856-4520, extension 30.

Sincerely yours,



10 Cynthia K. Dohner
Regional Director